

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION

April 15, 2005

ITEM: 17

SUBJECT: Order No. R8-2005-057, Affirming Administrative Civil Liability Complaint No. R8-2005-037, I.D.I., Mira Loma, San Bernardino County

SUMMARY

I.D.I. is alleged to have violated Section 13376 of the California Water Code (CWC) by discharging pollutants to Day Creek as a result of runoff commingled with manure originating from a vacated dairy without having first filing a report of the (waste) discharge. On March 10, 2005, the Executive Officer issued Administrative Civil Liability Complaint (ACLC) No. R8-2005-037 to I.D.I. The maximum liability that the Regional Board could assess administratively under CWC Section 13385(c) for discharges that were observed on February 26, 2004 and October 27, 2004 is \$20,000 for two days of discharge plus \$1,990,000 (\$10 per gallon for each gallon discharged in excess of the first 1,000 gallons (i.e. 199,000 gallons)). Therefore, the maximum liability that could be assessed for these violations is \$2,010,000. The assessment proposed in ACLC No. R8-2005-037 is \$30,000.

BACKGROUND

The former dairy facility known as Hillcrest Dairy, located at 11355 Bellegrave Avenue, Mira Loma, was regulated by General Waste Discharge Requirements For Concentrated Animal Feeding Operations (Dairies And Related Facilities) Within The Santa Ana Region, NPDES No. CAG18001, Order No. 99-11. Order No. 99-11 prohibits discharges of manure laden runoff unless it is a result of an overflow from a storage facility designed, constructed, maintained, and operated to contain all process generated wastewater plus the runoff from a 25-year, 24-hour rain storm. On June 14, 2002, Regional Board staff was notified that I.D.I. had purchased the former dairy facility from its operator, Edward Hoekstra, for the purpose of redeveloping the site for non-dairy land use. The dairy was vacated, was no longer covered by Order No. 99-11, and the accumulated loose manure was scraped from the corral surface area and removed from the site. However, this clean-up process did not remove all manure from the corrals that had accumulated over the many years that the dairy was in operation. Residual manure remained loosely deposited beneath fence lines and in the compacted corral surface areas.

FINDINGS

On February 26, 2004, Regional Board staff observed a discharge of storm water runoff commingled with manure from the corral area of the vacated dairy facility. The discharge was observed flowing onto Bellegrave Avenue and then into Day Creek (a major tributary to the Santa Ana River, a water of the United States) via a street storm drain catch basin. An analysis of a sample obtained by Regional Board staff from the discharge indicated that pollutants were present in the runoff consistent with pollutants present in runoff from dairy facility corrals. The detected levels of ammonia, chemical oxygen demand, and total dissolved solids all significantly exceeded the surface water quality objectives for discharges to Day Creek. Sufficient

information was not available to calculate a reasonable estimate of the amount of runoff that was discharged from the site.

Regional Board staff informed I.D.I. in a letter dated March 22, 2004 of the observed discharge on February 26, 2004, and that the discharge of pollutants in runoff to Day Creek was a violation of the California Water Code. Enclosed with the letter was a copy of the Regional Board's guidelines for the preparation of Engineered Waste Management Plans (EWMP). The letter requested that suitable runoff containment facilities be developed and implemented for the site based on these guidelines. The letter also requested that I.D.I. respond to Regional Board staff with their containment plan by April 5, 2004. Regional Board staff, however, received no such plan until October 14, 2004. On October 20, 2004, after reviewing the design for the containment facilities, staff rejected the design because the proposed containment basin did not have adequate containment capacity (i.e. the capacity of the basin was not consistent with the design criteria in the EWMP guidelines).

On October 26, 2004, Regional Board staff observed that a containment basin had been excavated to intercept runoff from the corrals. It appeared to have been based on the design that had been included in the October 14, 2004 submittal that was rejected by Regional Board staff. On October 27, 2004, Regional Board staff observed another discharge of corral runoff, overflowing from the containment basin, onto Bellegrave Avenue and to Day Creek. Based on observations by Regional Board staff that the containment basin was full less than 24 hours prior to the rain storm of October 26 and 27, 2004, the amount of rain received during the storm, and reasonable site engineering calculations, it is estimated that approximately 200,000 gallons of corral runoff commingled with manure were discharged from the former dairy site to Bellegrave Avenue, and then to Day Creek, on October 27, 2004.

On March 10, 2005, the Executive Officer issued ACLC No. R8-2005-037 to I.D.I. for the discharges that occurred on February 26 and October 27, 2004. The ACLC proposed that administrative civil liability be imposed on I.D.I. in the amount of \$30,000.

## DISCUSSION

CWC Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors are discussed below:

### 1. Nature, Circumstances, Extent and Gravity of the Violation

Regional Board staff observed a discharge of runoff from the corrals of the former dairy on February 26, 2004. Staff informed I.D.I., by letter, that such waste discharges violated the CWC because the incident constituted a discharge of wastes without having first filed a report of the (waste) discharge. After being requested to take action to provide containment to prevent future discharges, I.D.I. failed to act in a timely manner to construct adequate containment. As a result, staff observed a second discharge incident on October 27, 2004.

On December 7, 2004, Regional Board staff observed that a containment basin, which appeared to be of sufficient capacity to contain site corral runoff, had been constructed. Staff has visited the site during subsequent rainstorms and has not observed any further discharges of runoff from the corral areas.

The discharge of pollutants without first filing a report of the waste discharge is a violation of CWC Section 13376. Section 13385(a) of the CWC stipulates that such a violation shall be

liable civilly. Therefore, I.D.I. is liable civilly in accordance with CWC Section 13385(a). Section 13385(c) of the CWC provides that the Regional Board may impose administrative civil liability in an amount that shall not exceed ten thousand dollars (\$10,000) for each day in which the violation occurs, plus \$10 per gallon for each gallon in excess of 1,000 gallons that is discharged. Since sufficient information was not available to estimate the amount of waste that was discharged from the site on February 26, 2004, the maximum civil liability for the amount of waste discharged from the site on February 26, 2004 was not calculated. However, for the estimated 200,000 gallons of waste that was discharged on October 27, 2004, the maximum civil liability would be \$1,990,000 (\$10 per gallon for each gallon discharged in excess of the first 1,000 gallons (i.e. 199,000 gallons)). Therefore, the maximum amount of civil liability that the Regional Board could assess administratively for the discharges observed on February 26 and October 27, 2004 by I.D.I. (not including the amount of waste discharged on February 26) is \$2,010,000 (\$20,000 for two days of discharge plus \$1,990,000).

2. Ability to Pay the Proposed Assessment

Regional Board staff has no information to indicate that I.D.I. would be unable to pay the proposed assessment.

3. Any Prior History of Violations

Regional Board staff is unaware of any other violations by I.D.I.

4. Degree of Culpability

I.D.I. is entirely culpable for the discharges observed on February 26 and October 27, 2004. The discharges were the result of their failure to construct adequate containment structures, and, therefore, could have been avoided. The discharge occurred despite Regional Board staff's efforts to encourage improvement of containment in a letter, at an on-site meeting with an I.D.I. representative on October 5, 2004, and numerous telephone conversations.

5. Economic Benefit or Savings, if any, Resulting from the Discharge

Water Code Section 13385(e) specifies, among other things, that, at a minimum, liability shall be assessed at a level that recovers the economic benefits derived from the act(s) that constitute the violation. An economic analysis was performed to determine what benefit there was for failing to provide adequate containment. Staff's analysis indicates that I.D.I. saved a maximum of \$1,000 in delaying construction. Therefore, the proposed liability assessment recovers any economic benefit gained by I.D.I.

RECOMMENDATION

Regional Board staff recommends that the Regional Board adopt Order No. R8-2005-057, affirming the assessment of \$30,000 specified in Administrative Civil Liability Complaint No. R8-2005-037.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION**

IN THE MATTER OF: )

I.D.I. )  
18101 Von Karman Avenue )  
Irvine, CA 92612 )

**ORDER NO. R8-2005-0057  
FOR  
ADMINISTRATIVE CIVIL LIABILITY**

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), held a hearing on April 15, 2005 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2005-037, dated March 10, 2005, and on the recommendation for the imposition of administrative civil liability pursuant to California Water Code (CWC) Section 13385 in the amount of \$30,000. The Regional Board finds as follows:

1. On June 14, 2002, Regional Board staff was notified that I.D.I. had purchased the former dairy facility known as Hillcrest Dairy, located at 11355 Bellegrave Avenue, Mira Loma, from its operator, Edward Hoekstra, for the purpose of redeveloping the site for non-dairy land use. The dairy was vacated, and the accumulated loose manure was scraped from the corral surface area and removed from the site.
2. On February 26, 2004, Regional Board staff observed a discharge of storm water runoff commingled with manure from the corral area of the vacated dairy facility. The discharge was observed flowing onto Bellegrave Avenue and then into Day Creek via a street storm drain catch basin.
3. Although most of the loose, surface manure had been scraped and removed from the facility's corral area, residual manure remained loosely deposited beneath fence lines and in the compacted corral surfaces.
4. Analysis of a sample obtained by Regional Board staff from the discharge that occurred on February 26, 2004 indicated pollutants were present in the runoff consistent with pollutants present in runoff from dairy facility corrals.
5. Regional Board staff informed I.D.I. in a letter, dated March 22, 2004, of the observed discharge on February 26, 2004, and that the discharge of pollutants in runoff to Day Creek was a violation of the California Water Code. Enclosed with the letter was a copy of the Regional Board's guidelines for the preparation of Engineered Waste Management Plans. The letter requested that suitable runoff containment facilities be developed and implemented for the site based on these guidelines. The letter also requested that I.D.I. respond to Regional Board staff with their containment plan by April 5, 2004. However, Regional Board staff received no such plan until October 14, 2004. On October 20, 2004, after reviewing the design for the containment facilities, Regional Board staff rejected the design because it had inadequate capacity.
6. On October 26, 2004, Regional Board staff observed that a containment basin had been excavated to intercept runoff from the corrals. It appeared to have been based on the design that had been included in the October 14, 2004 submittal. On October 27, 2004, Regional Board staff observed a discharge of corral runoff overflowing from the containment basin to Bellegrave Avenue.
7. Based on site conditions observed by Regional Board staff less than 24 hours prior to the rain storm of October 26 and 27, 2004, combined with site engineering data, it is estimated

that approximately 200,000 gallons of corral runoff commingled with manure were discharged from the former dairy site to Bellegrave Avenue, and then to Day Creek, on October 27, 2004.

8. On December 7, 2004, Regional Board staff observed that a containment basin, which appeared to be of sufficient capacity to contain site corral runoff, had been constructed.
9. I.D.I. failed to file a report of (waste) discharge required by Water Code Section 13376 for the above-cited discharges of waste.
10. Section 13385(a)(2) of the CWC provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed \$10,000 for each day in which the violation occurs, plus an amount not to exceed \$10 per gallon for each gallon discharged and not cleaned up exceeding the first 1,000 gallons.
11. On March 10, 2005, the Executive Officer issued Administrative Civil Liability Complaint No. R8-2005-037 to I.D.I., proposing that the Regional Board impose civil liability in the amount of \$30,000 on I.D.I. for the violation cited above.
12. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEARBY ORDERED that, pursuant to California Water Code Section 13385, administrative civil liability shall be imposed on I.D.I. in the amount of \$30,000 as proposed in Complaint No. R8-2005-037 for the violation cited, payable as set forth below:

1. I.D.I. shall pay the entire amount to the State Water Resources Control Board (State Board) by May 15, 2005.
2. The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to CWC Section 13320, you may petition the State Board for review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's adoption of this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on April 15, 2005.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Gerard J. Thibeault  
Executive Officer

**IN THE MATTER OF:**

**18101 Von Karman Avenue  
Irvine, CA 92612**

YOU ARE HEREBY GIVEN NOTICE THAT:

1. I.D.I. is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), may impose civil liability pursuant to Section 13385 of the California Water Code (Water Code).
2. A hearing concerning this complaint will be held before the Regional Board within 90 days of the date of issuance of this complaint, unless I.D.I. waives the right to a hearing. Waiver procedures are specified on page 4 of the complaint. If the hearing in this matter is not waived, it will be held during the Regional Board's regular meeting on April 15, 2005 at the City of Loma Linda Council Chambers, 25541 Barton Road, Loma Linda, CA. The meeting begins at 9:00 a.m. I.D.I. will have an opportunity to appear and be heard and to contest the allegations in this complaint and the imposition of civil liability by the Regional Board. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date.
3. If the April 15, 2005, hearing is held, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. I.D.I. is alleged to have discharged pollutants to Day Creek (a major tributary to the Santa Ana River, a water of the United States) as a result of a discharge of runoff commingled with manure originating from the vacated dairy facility formerly operated by Edward Hoekstra (but now owned by I.D.I.) at 11355 Bellegrave Avenue, Mira Loma, without having filed a report of the (waste) discharge in violation of Water Code Section 13376.
5. The complaint is based on the following facts:
  - A. On June 14, 2002, the Regional Board was notified that I.D.I. had purchased the former dairy facility known as Hillcrest Dairy located at 11355 Bellegrave Avenue, Mira Loma, from its operator, Edward

Hoekstra, for the purpose of redeveloping the site for non-dairy land use. The dairy was vacated, and the accumulated loose manure was scraped from the corral surface area and removed from the site.

- B. On February 26, 2004, Regional Board staff observed a discharge of storm water runoff commingled with manure from the corral area of the vacated dairy facility. The discharge was observed flowing onto Bellegrave Avenue and then into Day Creek via a street storm drain catch basin.
- C. Although most of the loose, surface manure had been scraped and removed from the facility's corral area, residual manure remained loosely deposited beneath fence lines and in the compacted corral surfaces.
- D. Analysis of a sample obtained by Regional Board staff from the discharge that occurred on February 26, 2004 indicated pollutants were present in the runoff consistent with pollutants present in runoff from dairy facility corrals.
- E. Regional Board staff informed I.D.I. in a letter, dated March 22, 2004, of the observed discharge on February 26, 2004, and that the discharge of pollutants in runoff to Day Creek was a violation of the California Water Code. Enclosed with the letter was a copy of the Regional Board's guidelines for the preparation of Engineered Waste Management Plans. The letter requested that suitable runoff containment facilities be developed and implemented for the site based on these guidelines. The letter also requested that I.D.I. respond to the Regional Board with their containment plan by April 5, 2004. However, the Regional Board received no such plan until October 14, 2004. On October 20, 2004, after reviewing the design for the containment facilities, staff rejected the design because it had inadequate capacity.
- F. On October 26, 2004, Regional Board observed that a containment basin had been excavated to intercept runoff from the corrals. It appeared to have been based on the design that had been included in the October 14, 2004 submittal. On October 27, 2004, Regional Board staff observed a discharge of corral runoff overflowing from the containment basin to Bellegrave Avenue.
- G. Based on site conditions observed by Regional Board staff less than 24 hours prior to the rain storm of October 26 and 27, 2004, combined with site engineering data, it is estimated that approximately 200,000 gallons of corral runoff commingled with manure were discharged from the former dairy site to Bellegrave Avenue, and thus to Day Creek, on October 27, 2004.

- H. On December 7, 2004, Regional Board staff observed that a containment basin, which appeared to be of sufficient capacity to contain site corral runoff, had been constructed.
  - I. I.D.I. failed to file a report of (waste) discharge required by Water Code Section 13376 for the above-cited discharges of waste to the Santa Ana River.
- 6. Pursuant to Water Code Section 13385(a)(2), those who violate Water Code Section 13376 are liable civilly. As provided by Water Code Section 13385(c), the Regional Board can administratively assess civil liability in an amount not to exceed \$10,000 for each day in which the violation occurs, plus an amount not to exceed \$10 per gallon for each gallon discharged and not cleaned up exceeding the first 1,000 gallons.
  - 7. The maximum liability that the Regional Board could assess administratively for the discharge of wastes without filing a report of discharge with the Regional Board, in accordance with Water Code Section 13385(c), is \$2,010,000 ([200,000 – 1,000 gallons] multiplied by \$10 per gallon, plus [\$10,000 per day multiplied by 2 days]).
  - 8. Water Code Section 13385(e) specifies factors that the Regional Board shall consider in establishing the amount of civil liability. At a minimum, liability shall be assessed at a level that recovers the economic benefits derived from the act(s) that constitute the violation. An economic analysis was performed to determine what benefit there might have been to delay construction of a containment basin. Staff estimates that I.D.I. saved a maximum of \$1,000 in delaying construction of the containment basin.
  - 9. Based upon the consideration of the factors specified in Water Code Section 13385(e), it is proposed that administrative civil liability be imposed on I.D.I. in the amount of \$30,000.




**WAIVER OF HEARING**

You may waive your right to a hearing. If you waive your right to a hearing, please sign the attached waiver and return it with a check made payable to the State Water Resources Control Board in the amount of the civil liability proposed in paragraph 9 above. Send the check and waiver to:

Santa Ana Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501-3339

If you have any questions regarding this complaint, please contact Gerard J. Thibeault at (951) 782-3284, Stephen D. Mayville at (951) 782-4922, or contact the Regional Board's staff counsel, Jorge Leon at (916) 341-5180.

3-10-05  
Date

  
Gerard J. Thibeault  
Executive Officer

**IN THE MATTER OF:**

**COMPLAINT NO. R8-2005-0037  
FOR  
ADMINISTRATIVE CIVIL LIABILITY**

I.D.I. Corporate Officer